IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2004

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.31502 of 2002
and W.P.No.31503 of 2002

Showkath Ali,
S/o. Mohammed Gani Rauthar,
No.64, Bshyagarlu Road,
R.S.Puram,
Coimbatore - 2. .....Petitioner in
W.P.No.31502 of 2002
B. Mahavir Jain,
S/o. Bansilal Jain,
No.66, Bshyagarlu Road,
R.S.Puram,
Coimbatore - 2. .....Petitioner in
W.P.No.31503 of 2002

-Vs-

The Commissioner,
Coimbatore City Municipal
Corporation,
Coimbatore. .....Respondents in
both W.Ps

Writ Petitions, under Article 226 of the Constitution of
India, praying for issuance of Writ of Certiorarified Mandamus, to call for
the records and to quash the same, as stated therein.

For Petitioners :: Mr. R. Krishnamoorthy
Senior Counsel for
Mr. M. Sri Ram in
W.P.No.31502 of 2002

Mr. M. Venkatachalapathy
Senior Counsel for
Mr. M. Sri Ram in
W.P.No.31503 of 2002

For Respondents :: Mr. G. Masilamani
Senior Counsel
Mr.R.Sivakumar in
both W.Ps

:O R D E R

Aggrieved by the proceedings of the respondent dated 13.06.2002, made in exercise of the powers conferred under Section 451 of The Coimbatore City Municipal Corporation Act, 1981 (in brevity "the Act"), cancelling the licence granted to the petitioners for building permission and requiring the petitioners to hand over possession of the property located in T.S.Ward No.8, Block No.2, Survey Nos.40 and 41, Site 25 and 26, Door No.66-B, West Bashyagarlu Street, R.S.Puram, Coimbatore, the petitioners have filed these writ petitions for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings No.Na.Ka.No.8407/98H.1/ West dated 13.06.200 2 and to quash the same and consequently to direct the respondent to establish their claim before the competent Civil Court in

respect of the properties of the petitioner located in T.S.Ward No.8, Block No.2, Survey Nos.40 and 41, Site 25 and 26, Door N o.66-B, West Bashyagarlu Street, R.S.Puram, Coimbatore.

2.1. The facts of the case in nutshell are as follows:-
Alleging that the petitioners have produced forged documents and made misrepresentation and obtained the building permission, the respondent / Corporation, exercising powers conferred under Sections 258 and 451(4) of the Act issued a notice to the petitioners on 22.01.1999. Pursuant to the notice, on the next day, viz., 23.01.1999, the respondent / Corporation proposed to demolish the building located in T.S.Ward No.8, Block No.2, Survey Nos.40 and 41, Site 25 and 26, Door No.66-B, West Bashyagarlu Street, R.S.Puram, Coimbatore, of course with the help of police and in the presence of media people. Aggrieved by the said action of the respondent / Corporation, the petitioners approached this Court by way of writ petitions in W.P.Nos.950 and 951 of 1999 for issuance of a Writ of Certiorarified Mandamus and to quash the same and also to forbear the respondent in any way interfering with the rights of the petitioners in occupying their respective disputed premises.

2.2. This Court, after hearing both the parties in W.P.Nos.950 and 951 of 1999, by an order dated 17.02.1999 directed the respondent therein to restore possession of the buildings to the petitioners within a period of two weeks from that day and permitted the respondent to proceed with the enquiry pursuant to the notice issued under Sections 258 and 451(4) of the Act, referred to above making it clear that if it is ultimately decided against the petitioners, they shall hand over the possession of the buildings to the respondent without any encumbrance over the same. The respondent was also directed not to demolish the buildings and give sufficient time to the petitioners to approach the appellate authority to get appropriate orders.

2.3. Thereafter, by an order dated 25.02.1999, this Court in W.P. Nos.950 and 951 of 1999 clarified that if the petitioners are aggrieved by the final orders of the respondent, pursuant to the action initiated under Sections 258 and 451(4) of the Act, they are at liberty to approach this Court

for suitable directions.

2.4. Pending an enquiry before the respondent, the petitioners again approached this Court by way of writ petitions in W.P.Nos.9760 and 9761 of 1999, seeking writ of mandamus to issue directions to the respondent therein that the dispute relating to the title of the suit property in question shall be adjudicated by a competent Civil Court, having its jurisdiction.

2.5. This Court, by an order dated 15.06.1999, made in W.P.Nos.9760 and 9761 of 1999 permitting the

petitioners to agitate their title before the competent Civil court, dismissed the said writ petitions.

2.6. However, complaining that the petitioners were not given sufficient time to peruse the records, materials and documents, they have filed writ petitions in W.P.No.15866 and 15867 of 1999, seeking issuance of Writ of Mandamus, forbearing the respondent therein from proceeding with the enquiry, relating to the property.

2.7. This Court, by order dated 15.11.1999 made in W.P.No.15866 and 15867 of 1999, directed the respondent to permit the petitioners to peruse the records, materials and documents during office hours for a period of two weeks and thereafter proceed in accordance with law. Accordingly, the respondent held an enquiry and passed an order dated 13.06.2002, which is impugned in these writ petitions.

2.8. Placing reliance on the observations of this Court dated 25.02 .1999 in W.P.Nos.950 and 951 of 1999 that if the petitioners are aggrieved by the proceedings of the respondents they are at liberty to approach this Court, the petitioners once again approached this Court in W.P.M.P.Nos.33852 and 33854 of 2002.

2.9. However, by an order dated 26.07.2002 in W.P.M.P.Nos.33852 and 33854 of 2002 it was clarified that if the parties are aggrieved by the final orders of the respondent dated 13.06.2002, they are at liberty to challenge the same in the manner known to law in a separate proceedings.

2.10. Aggrieved by the said order dated 26.07.2002, the petitioners preferred writ appeals in W.A.Nos.2311 and 2312 of 2002.

2.11. In the meanwhile, when the respondent / Corporation on the strength of the proceedings dated 13.06.2002 proposed to take possession of the buildings, the petitioners complaining willful disobedience of the orders of this Court dated 17.02.1999 and 25.02.1999 made in W.P.Nos.950 and 951 of 1999, have preferred Contempt Petitions 602 and 603 of 2002, wherein by an order dated 14.01.2003 this Court, observing that the respondent could have

waited for a few days to enable the petitioners to seek appropriate relief before proper forum and that it is too unreasonable on the part of the respondent to resume possession on the very next day of the dismissal of the direction petitions filed by the petitioners, permitted the petitioners to work out their rights in a separate proceedings. By that time, the petitioners have already preferred the present writ petitions viz., W.P.Nos.3150 2 and 31503 of 2002, challenging the order of the respondent dated 13 .06.2002.

2.12. Subsequently, a Division Bench of this Court while disposing of the appeals in W.A.Nos.2311 and 2312 of 2002, at the admission stage, which arose against the order dated 26.07.2002 made in W.P.M.P. Nos.33852 and 33854 of 2002 in W.P.No.950 and 951 of 1999, by order dated 05.03.2003 held as follows:-
".....we direct the appellants to institute a Civil Suit in a Civil Court for appropriate reliefs, for which time of one month is granted from today. It is open to the appellants to seek appropriate interim orders from the Civil Court. On such applications for interim orders being made, it is for the civil court to decide about the merits of the case to grant such interim orders. The respondents are directed to forthwith remove the seal and the lock enabling the appellant to enjoy the property, subject to what we have stated supra".

2.13. In compliance of the orders of the Division Bench of this Court dated 05.03.2003, the petitioners herein instituted the suit in O.S.No.463 of 2003 on the file of Sub-Court, Coimbatore, for the following reliefs:-
"(a) directing that the first plaintiff is registered mortgagee under the Usufructory Mortgage (Boggium) deed dated 14.10.1996 under first defendant who is owner of "A" Schedule property;

(b) declaring that the second plaintiff is Lessee under the Lease Deed dated 23/12/1996 under the first Defendant who is owner of "B" Schedule property;

(c) declaring that the second defendant is not owner of the suit properties shown in "A" and "B" schedule and grant consequential permanent injunction restraining the second defendant and their men from in any manner interferring with the peaceful enjoyment of the suit properties by the plaintiff;

(d) declaring that the entries effected in the Town Survey Land Register on 30/03/2000 showing the suit properties as properties of the second defendant is invalid and not binding on the plaintiffs and consequential

permanent injunction restraining the second defendant and their officials from claiming or relying right over the suit properties on the basis of the Town Survey Land Register;

(e) declaring that the suit properties are not included as properties of second defendant in the Immovable Property Register maintained by the

Corporation since second defendant is not owner of the suit properties;

(f) granting permanent injunction restraining the second defendant and their agent, officials, subordinates and men from in any manner interfering with the plaintiffs peaceful possession and enjoyment of the suit properties;

(g) to awarding costs of the suit".

2.14. Pending the above said suit, the petitioners also filed I.A. No.328 of 2003 in O.S.No.463 of 2003 on the file of Sub-Court, Coimbatore to direct the second respondent therein to remove the seal and lock on the "A" Schedule and "B" Schedule Properties and I.A.No.329 of 2003 to grant an order of temporary injunction, restraining the second respondent therein, their agents, men and subordinates from in any manner interfering with the peaceful possession and enjoyment of the suit properties and grant an order of ad-interim injunction to the same effect pending disposal of the petition.

2.15. Thereafter, at the instance of the respondents, a Division Bench of this Court by an order dated 11.04.2003 set aside the order dated 05.03.2003 and restored the appeals in W.A.Nos.2311 and 2312 of 2 002 on the ground that the respondents were not heard while passing the orders on 05.03.2003.

2.16. After restoration of appeals in W.A.Nos.2311 and 2312 of 2002 , a Division Bench of this Court by order dated 20.01.2004 disposed of the appeals which runs as follows:-
".....it would not be proper for this Court to go into the rival questions at this stage, as the final order has already been passed by the first respondent, viz., the Commissioner, Coimbatore City Municipal Corporation, pursuant to the directions of the learned single judge and it would be appropriate for the appellants only to vindicate their grievance in the writ petitions".

3. Mr. R.Krishnamoorthy, learned Senior Counsel appearing for the petitioner in W.P.No.31502 of 2002 and Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the petitioner in W.P.No.31503 of 2002 assailed the impugned order of the respondent mainly on the grounds that the respondent / corporation cannot judge its own cause and therefore, the impugned proceedings of the respondent dated 13.06.2002 is illegal and the same is without jurisdiction as the respondent / corporation is not entitled to go into the dispute relating to the title and possession of the suit property, which can be gone into and decided only by the competent Civil Court, for which the petitioners herein have already laid a suit in O.S.No.463 of 2003 on the file of Sub-Court, Coimbatore and the same is pending, wherein the respondent has already filed their written statement and the suit is ready for framing issues. In this regard, reliance was placed by learned Senior Counsel, on the decision of the Apex Court reported in RAMESH CHAND ARDAWATIYA

4.1. Per contra, Mr. G.Masilamani, learned Senior Counsel appearing for the respondent / Corporation sustaining the impugned order of

the respondent / Corporation contends that the issue before the respondent was not in fact with regard to the title and possession of the suit property, but as to the rights of the petitioners to seek building permission for putting up construction in the impugned land and once it was found that the petitioner had obtained building permission illegally, the respondent / Corporation is empowered to cancel the building permission invoking Section 451(4) of the Act and to demolish the impugned buildings.

4.2. Learned Senior Counsel further contends that the impugned plots were originally laid and sold by the Corporation in the year 1919 and 1921 and in the process five plots remained unsold, in which the Government constructed "Uzhavar Santhai" in three plots and the remaining two plots still continue to be a public street and therefore, the respondents are entitled to remove the encroachments under Section 2 58 of the Act. Otherwise, it is contended that the powers conferred under Sections 258 and 451(4) of the Act would become redundant.

5. I have given careful consideration to the submissions of both the parties.

6. It is apt to refer Sections 258 and 451(4) of the Act, which are extracted hereunder:-
"Section 258. Removal of encroachments:- (1) The Commissioner may by notice require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground - floor window) situated against or in front of such premises and in or over any street or any public place the control of which is vested in the corporation.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give him a prescriptive title or where such period is less than thirty years, for a period of thirty years or that it was erected with the consent of any municipal authority duly empowered in that behalf, ad the period if any, for which the consent is valid has not expired the corporation shall make compensation to every person who suffers damage by the removal or alteration of the same.

Section 451(4): Subject to the special provisions in Chapters X, XI and XII regarding buildings, hutting grounds and private markets and subject to such sanction as may be required for the refusal of a licence or permission any licence or permission granted under this act or any rule or by law made under it may at any time be suspended or revoked by the commissioner if any of its restrictions, limitations or conditions is evaded or infringed by the grantee, or if the grantee is convicted of a breach of any of the provisions of this Act or of any rule, by-law or regulation made under it in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud."
(Emphasis Supplied)

7.1. A careful conjoint reading of the above said sections would make it clear that as provided under Section 258(1) of the Act, the Commissioner should give notice to the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction. Section 258(2) of the Act enables the owner and the occupier of the land in question to prove that such projection, encroachment or obstruction has existed for a period sufficient under law of limitation.

7.2. Section 451(4) of the Act provides the procedure to be followed for suspending and revoking the licence obtained by misrepresentation or fraud. Therefore, as rightly pointed out by Mr. G. Masilamani, learned Senior Counsel appearing for the respondent the issue for consideration is not the one relating to the title but with reference to the validity of the permission granted to the petitioners by the respondent / Corporation and when the same is alleged to be based on misrepresentation and fraud, the respondent / Corporation is under a statutory obligation to restore the impugned land to use the same as public street.

7.3. The statutory obligation of the respondent / Corporation to maintain the public street and the power of the respondent / corporation to remove the encroachment under Section 258 of the Act by withdrawing the permission or licence granted to the petitioner, exercising the powers conferred under Section 451 of the Act cannot be disputed.

8.1. However, since the petitioners contend that they have valid title over the impugned land and are in possession and enjoyment of the same based on such title and they also laid a civil suit in O.S.No.463 of 2003 on the file of Sub-Court, Coimbatore, such issues relating to title, possession and enjoyment of the impugned property can be decided only by the Civil Court and not by the respondent / Corporation, I have no hesitation to hold that the powers conferred under Section 258 and 451 of the Act, referred to above shall be only subject to the results of the civil suit laid for declaration of title and for consequential injunction.

8.2. The Supreme Court in RAMESH CHAND ARDAWATIYA ..VS.. ANIL PANJWANI (2003 (7) S.C.C. 350)held as follows:-
"So, the person in possession may not have title to the property yet if he has been inducted into possession by the rightful owner and is in peaceful and settled possession of such property he is entitled in law to protect the possession until dispossessed by due process of law by a person having a title better than what he has. A person in possession of the property cannot be forcibly dispossessed by another rank trespasser and even if the latter does so, the former may be entitled to restoration of possession, because the law respects peaceful possession and frowns upon the person who takes the law in his own hands".

8.3. As per the ratio laid down by the Supreme Court, the petitioner who claims to be in possession and enjoyment of the property cannot be forcibly dispossessed by the respondent / Corporation, without due process of law.

9. Of course, the respondent / corporation issued a notice under Section 258 and 451(4) of the Act on 22.01.1999 and proposed to demolish the buildings on the very next day with the aid of the police in the presence of the media people, taking note of which, this Court restored possession to the petitioners on 17.02.1999, of course with a direction to the respondent to proceed with the enquiry and the same cannot be ignored. Again when the respondent wanted to take possession of the impugned buildings pursuant to the passing the impugned order on 13.06.2002, by giving 30 days time, the respondent have laid the suit in O.S.No.463 of 2003 because the respondent cannot go into the title and possession over the suit property. Till such issue is decided, I am of the considered opinion that any interference to the rights of the parties relating to title and possession of the impugned property would only further complicate the issues. Therefore, in order to avoid multiplicity of proceedings, I am of the considered opinion that it is just and proper to direct the Civil Court to take possession of the property, making it clear that the respondent is deemed to be in possession of the buildings in order to maintain status quo ante as on 13.06.2002 and to direct the learned Sub-Judge, Coimbatore to dispose of the I.As on or before 30.04.2004 based on the well settled principles viz., (i) making out a prima facie case; (ii) approaching the court with clean hands; and (iii) satisfying the principles of balance of convenience; and such interim order shall be subject to the final decree in the suit.

10. In the result,
(i) The impugned order of the respondent dated 13.06.2002 stands quashed without prejudice to the right of the respondent to take appropriate action under Sections 258 and 451(4) of the Act, subject to the result in the suit in O.S.No. 463 of 2003 on the file of Sub-Court, Coimbatore.

(ii) The respondent / Corporation is directed to hand over the keys of the impugned buildings within a period of 15 days from the date of receipt of a copy of this order to the Sub-Court, Coimbatore in O.S.No.463 of 2003.
(iii) Learned Subordinate Judge, Coimbatore is directed to

take possession of the buildings and to dispose of the I.A.No.328 of 2003 in O.S.No.463 of 2003 on merits and in terms of the directions given above within a period of 30 days from the date of receipt of a copy of this order.

(iv) Learned Subordinate Judge, Coimbatore is directed to dispose of the suit as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order.

(v) The respondent / Corporation is at liberty to proceed in accordance with law, subject to the result in the suit in O.S.No.463 of 200 3 on the file of Sub-Court, Coimbatore.

11. The writ petitions are ordered accordingly. No costs.

Index: Yes/No
Internet: Yes/No
Dpn/-

To:
The Commissioner,
Coimbatore City Municipal
Corporation,
Coimbatore.